

# MISSOURI DEPARTMENT OF NATURAL RESOURCES LAND RECLAMATION COMMISSION

In the Matter of:	)	
	)	
BUILDEX, INC.,	)	LRP Permit No. <b>0387</b>
New Market Plant Site	)	Proceeding Under
Platte County, Missouri	)	The Land Reclamation Act,
Permit Expansion Application	)	Sections 444.760 through 444.790,
	)	RSMo.
CONCERNED CITIZENS	)	
OF PLATTE COUNTY,	)	
ALAN & PAULA WEBB,	)	
KARI KNABE,	)	
SUSAN BROWN,	)	
JERALD & LORENE FANSHER,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	
LEEANE TIPPETT-MOSBY,	)	
Acting Staff Director,	)	
Land Reclamation Program,	)	
Division of Environmental Quality,	)	
Respondent,	)	
	)	
BUILDEX, INC,	)	
Applicant,	)	
	)	
	)	

## **ORDER ON MOTION TO COMPEL**

By Order issued May 17, 2009, Petitioners were ordered on or before June 15, 2009, to provide complete answers to Applicant's Interrogatories; or in the alternative, Petitioners could file an Amended Statement of the Case setting out what allegations, if any, Petitioners plan to make regarding the completeness of Buildex's permit application and/or Buildex's compliance with the public notice provisions of the Land Reclamation Act and its accompanying regulations.

On June 15<sup>th</sup>, Petitioners filed responses and objections completing ignoring the Order of May 17, 2009. The May 17<sup>th</sup> Order ordered Petitioners to answer the

interrogatories or in the alternative file an Amended Statement of the Case. Petitioners elected to do neither.

The various boilerplate objections propounded by Petitioners on June 15<sup>th</sup> are untimely and are overruled on that ground. Any such objections were to have been propounded in answer to the Second Interrogatories within thirty days of service of same in accordance with Missouri Rules of Court. *Rule 57.01 (c) (1)*. Petitioners failed to comply with this time limit. The May 17<sup>th</sup> Order was not a grant of time for Petitioners to come up with additional objections that were required to have been filed within thirty days of service of Applicant's Second Interrogatories.

Petitioners' Objections are merely an attempt to further delay this proceeding and prevent Applicant from discovering factual allegations Petitioners may have made at trial regarding the completeness of Applicant's application and compliance with public notice requirements, and thereby prohibit Applicant from preparing to defend against any such allegations. Each General Objection is overruled for lack of any substantive basis to deny Applicant the information sought. Applicant's Second Interrogatories are not overbroad or unreasonably burdensome, nor do they call for legal conclusions. Petitioners' Objections on these grounds are overruled.

Petitioners' Answers are totally unresponsive to the Interrogatories in contravention of the Hearing Officer's Order of May 17<sup>th</sup>. If Petitioners did not have allegations that Buildex's application is noncompliant, or that Buildex failed to abide by notification requirements, Petitioners could have simply answered that they would not be making any factual allegations regarding these matters. If Petitioners did have allegations on these issues simple direct, responsive and nonevasive answers could have been given. It would serve no useful purpose to issue another Order for Petitioners' to make Response as they have established by their June 15<sup>th</sup> filing that they simply elect to ignore the Hearing Officer's Order at their own whim.

Therefore, Motion to Compel filed by Applicant on June 16, 2009 is granted as follows:

1. Any claim of Petitioners regarding the completeness of Applicant's permit expansion application is dismissed and stricken and judgment by default on this issue is rendered against Petitioners. *Rule 61.01 (b) (1)*. Accordingly,

Petitioners are prohibited from introduction of any testimony, exhibits or evidence which in any way relates to the completeness of Applicant's permit expansion application.

2. Any claim of Petitioners regarding Applicant's compliance with the public notice requirements of the Land Reclamation Act is dismissed and stricken and judgment by default on this issue is rendered against Petitioners. *Rule 61.01 (b) (1)*. Accordingly, Petitioners are prohibited from introduction of any testimony, exhibits or evidence which in any way relates to the public notice requirements of Applicant's permit expansion application.

Certificate of Service

I hereby certify that a copy of the foregoing has been sent as an email attachment on this 20<sup>th</sup> day June of 2009, to:

Charles F. Speer & Tammy R. Dodson, Speer Law Firm, PC, Attorneys for Petitioners,  
[cspeer@speerlawfirm.com](mailto:cspeer@speerlawfirm.com); [tdodson@speerlawfirm.com](mailto:tdodson@speerlawfirm.com)

Kara Valentine, Assistant Attorney General, Attorney for Respondent,  
[kara.valentine@ago.mo.gov](mailto:kara.valentine@ago.mo.gov)

Richard S. Brownlee III & Adam R. Troutwine, Hendren Andrae, LLC, Attorneys for Applicant,  
[richardb@hendrenandrae.com](mailto:richardb@hendrenandrae.com); [atroutwine@hendrenandrae.com](mailto:atroutwine@hendrenandrae.com)

Electronic copy sent to:

Dana Foster, Assistant to General Counsel – [dana.foster@dnr.mo.gov](mailto:dana.foster@dnr.mo.gov)

Leann Tippet-Mosby, DNR – [leann.tippitt.mosby@dnr.mo.gov](mailto:leann.tippitt.mosby@dnr.mo.gov)

Mike Larsen, DNR – [mike.larsen@dnr.mo.gov](mailto:mike.larsen@dnr.mo.gov)

SO ORDERED June 20, 2009.

MISSOURI DEPARTMENT OF NATURAL RESOURCES



W. B. Tichenor  
Hearing Officer  
1212 Torrey Pines Dr.  
Columbia, MO 65203-4824  
[wbtichenor@gmail.com](mailto:wbtichenor@gmail.com) (h)  
573-874-1817 (h)  
573-751-1712 (o)  
573-751-1341 FAX  
[w.b.tichenor@stc.mo.gov](mailto:w.b.tichenor@stc.mo.gov) (o)